

APPEAL NO. 022156
FILED OCTOBER 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 24, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 10th quarter. The claimant appealed, arguing that the hearing officer's SIBs determination is against the great weight and preponderance of the evidence and that the respondent (carrier) did not make a factual comparison between the factual situation of the qualifying period for the previous quarter(s) with the factual situation of the current qualifying period, as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(a) (Rule 130.108(a)). The carrier filed a response, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Rule 130.102 set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirements of Section 408.142(a)(4) and Rule 130.102(b)(2). The parties stipulated that the claimant sustained a compensable injury on _____, and that the qualifying period for the 10th quarter was from December 31, 2001, through March 31, 2002.

The hearing officer found that the claimant had not made the requisite good faith effort to obtain employment and determined that she was not entitled to SIBs for the 10th quarter. The hearing officer's decision reflects that he did consider the factors listed in Rule 130.102(e) in making his determination. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We will not substitute our judgment for that of the hearing officer where, as here, his determination is supported by sufficient evidence. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We are satisfied that the complained-of determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Rule 130.108(a) provides that the injured employee, the injured employee's representative, and the insurance carrier shall not pursue a dispute on entitlement or non-entitlement to SIBs without a factual or legal basis. Further, the insurance carrier shall not dispute entitlement to a subsequent quarter without considering a comparison of the factual situation of the qualifying period for the previous quarter with the factual situation of the current qualifying period. The claimant contends that the carrier did not make a comparison between the factual situation of the five previous qualifying periods

and the factual situation of the current qualifying period. We disagree. The carrier offered evidence to rebut the claimant's assertion that she made a good faith effort to seek employment commensurate with her ability to work during the qualifying period in dispute. A letter dated April 15, 2002, from an investigative company states that the claimant "acquired a list of casting companies from an outdated source. Some of these companies went out of business a few years ago, a lot of the telephone numbers provided are non-working numbers or to other businesses or private residences." The hearing officer could find from the evidence that the carrier at least considered the job search efforts of the previous quarters to the claimant's job search efforts for the 10th quarter and determined that the carrier had a factual or legal basis to dispute SIBs entitlement for the quarter in dispute. See Preamble at 23 Tex. Reg. 10609 (1998). We perceive no error.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Veronica Lopez
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge